

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the matter of	)	
	)	
Telecommunications Relay Services and	)	
Speech-to-Speech Services for	)	CG Docket No. 03-123
Individuals with Hearing and Speech Disabilities	)	

**ORDER**

**Adopted: February 6, 2008**

**Released: February 6, 2008**

By the Chief, Consumer and Governmental Affairs Bureau:

1. This Order adopts a revised Interstate Telecommunications Relay Services (TRS) Fund size and carrier contribution factor for the July 2007 to June 2008 Fund year.<sup>1</sup> As set forth below, the revised Fund size is \$636,736,491.75, and the revised carrier contribution factor is 0.00819.

**I. BACKGROUND**

2. On June 29, 2007, the Consumer and Governmental Affairs Bureau (CGB) released the 2007-2008 TRS rate order, which adopted compensation rates for the various forms of the TRS, a Fund size of \$553,378,363.18, and a carrier contribution factor of 0.0072.<sup>2</sup> Subsequently, on November 19, 2007, the Commission released the *2007 TRS Rate Methodology Order*, which, *inter alia*, adopted revised compensation rates.<sup>3</sup> The Commission stated that it would address whether the Fund size and carrier

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<sup>1</sup> TRS enables a person with a hearing or speech disability to access the nation's telephone system to communicate with voice telephone users through a relay provider and a Communications Assistant (CA). *See generally* 47 U.S.C. § 225; 47 C.F.R. § 64.601 *et seq.* (implementing regulations). The Interstate TRS Fund (Fund) compensates providers for the costs of providing interstate relay service and, with some forms of TRS, both interstate and intrastate relay services. There are two aspects to this cost recovery scheme: (1) collecting money from various telecommunications and related services to create a Fund from which TRS providers may be compensated, and (2) the payment of money from the Fund to providers to compensate them for their reasonable costs of providing service. *See generally Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Report and Order, and Declaratory Ruling, 22 FCC Rcd 20140 (Nov. 19, 2007) (*2007 TRS Rate Methodology Order*); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123 Order, 22 FCC Rcd 11706, 11706-08, at paras. 1-4 (June 29, 2007) (*2007 Bureau TRS Rate Order*). There are presently different per-minute compensation rates for the various forms of TRS: traditional (TTY-based) TRS, captioned telephone service, Speech-to-Speech (STS), IP Relay, and Video Relay Service (VRS). *See* [http://www.neca.org/source/NECA\\_Resources\\_4285.asp](http://www.neca.org/source/NECA_Resources_4285.asp) (TRS Monthly Fund Reports).

<sup>2</sup> *2007 Bureau TRS Rate Order*.

<sup>3</sup> *2007 TRS Rate Methodology Order*. The new compensation rates are effective March 1, 2008 (*i.e.*, the first day of the month following the effective date of the order, which date is 30 days after publication of the order in the Federal Register). *See id.*, 22 FCC Rcd at 20178, para. 109. The order was published in the Federal Register on January 17, 2008. *See* 73 FR 3197.

contribution factor should also be modified in a separate order.<sup>4</sup>

3. On November 30, 2007, the Fund administrator (the National Exchange Carrier Association (NECA)) filed with the Commission a revised Fund size and carrier contribution factor for the 2007-2008 Fund year.<sup>5</sup> NECA proposes increasing the Fund size approximately \$83 million (to \$636,736,491.75), and increasing the carrier contribution factor from 0.0072 to 0.00819.<sup>6</sup> NECA explains that increasing the Fund size is necessary because demand for certain interstate relay services, particularly Video Relay Service (VRS),<sup>7</sup> has outpaced its initial projections, and the revised compensation rates are generally higher than those adopted at the beginning of the Fund year in the *2007 Bureau TRS Rate Order*.<sup>8</sup> NECA asserts that, as a result, increasing the Fund size is necessary to ensure that it does not run out of money before the end of the Fund year.<sup>9</sup>

4. In addition, as a result of the increase in the Fund size, as well as the Commission's recent order requiring interconnected VoIP service providers to contribute to the Fund,<sup>10</sup> NECA notes that it also must revise the carrier contribution factor. The carrier contribution factor is calculated by dividing the Fund size by total interstate common carrier end-user revenues.<sup>11</sup> The revised Fund size is \$636,736,491.75, and NECA proposes using a revised revenue base of \$77.7 billion.<sup>12</sup> As a result, the

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<sup>4</sup> *2007 TRS Rate Methodology Order*, 22 FCC Rcd at 20141-42, para. 2 n.11.

<sup>5</sup> NECA, *Interstate Telecommunications Relay Service Fund, Supplement to Annual Filing for TRS Contribution Factor Increase*, CG Docket No. 03-123 (Nov. 30, 2007) (*2007 NECA Filing*).

<sup>6</sup> *2007 NECA Filing* at 2 and Exhibit 1.

<sup>7</sup> VRS is a form of TRS that allows individuals with hearing or speech disabilities to communicate using sign language through video equipment and the Internet, rather than using text. The video link allows the CA to view and interpret the VRS user's signed conversation, and relay the conversation back and forth between the VRS user and the called party. See 47 C.F.R. § 64.601(17).

<sup>8</sup> *2007 NECA Filing* at 1 (also including various tables and exhibits setting forth revised projected growth in minutes for VRS and the other forms of TRS through June 2008). To summarize, taking into consideration revised growth rates and the revised compensation rates, NECA concludes that an additional \$84.4 million will be required for VRS and an additional \$7.4 million will be required for interstate traditional TRS and interstate captioned telephone service. *Id.* at 5-6. NECA also determines that approximately \$8.8 million less will be required for IP Relay, and that approximately \$20,000 less will be required for STS. *Id.* at 8-9.

<sup>9</sup> *Id.* at 2.

<sup>10</sup> *IP-Enabled Services; Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996: Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities; Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities; The Use of N11 Codes and Other Abbreviated Dialing Arrangements*, WC Docket No. 04-36, WT Docket No. 96-198, CG Docket No. 03-123 & CC Docket No. 92-105, Report and Order, 22 FCC Rcd 11275 (June 15, 2007) (*VoIP TRS Order*). The requirement that interconnected VoIP providers contribute to the Fund became effective October 5, 2007.

<sup>11</sup> See 47 C.F.R. § 64.604(c)(5)(iii)(B).

<sup>12</sup> In the *2007 Bureau TRS Rate Order*, the Bureau used a projected revenue base of \$76.8 billion. *2007 Bureau TRS Rate Order*, 22 FCC Rcd at 11711-12, para. 24. Because, as noted above, the *VoIP TRS Order* requires interconnected VoIP service providers to contribute to the Fund, NECA has calculated a revised revenue base of \$77.7 billion, which includes an assessment on interconnected VoIP service providers' fourth quarter 2006 revenues as reported on FCC Form 499-A, pro-rated for the 2007-2008 Fund year (*i.e.*, beginning with the October 5, 2007, effective date of the interconnected VoIP providers' contribution obligation). See *VoIP TRS Order*, 22 FCC Rcd at 11295-96, para. 40; *2007 NECA Filing* at 10-11.

proposed revised carrier contribution factor is 0.00819.<sup>13</sup>

## II. DISCUSSION

5. We agree that because of the continued significant growth in VRS minutes, together with the revised compensation rates, the present Fund size may be inadequate to compensate providers for the remainder of the present 2007-2008 Fund year. Therefore, we find it necessary to increase the Fund size and adjust the carrier contribution factor for the July 2007 through June 2008 funding period. Because the TRS regulations provide that the carrier contribution factor shall be determined annually,<sup>14</sup> we apply the established standards for waiver of Commission rules.

6. Generally, the Commission's rules may be waived for good cause shown.<sup>15</sup> The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>16</sup> In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>17</sup> Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.<sup>18</sup>

7. Applying this standard, we conclude that good cause exists to waive our rules to the extent they require that the carrier contribution factor be determined on an annual basis.<sup>19</sup> The increase in demand usage in TRS was not anticipated, and the Commission must ensure that the Interstate TRS Fund has adequate funds to compensate eligible TRS providers for the provision of eligible TRS services and ensure the continued availability of relay services to persons with hearing and speech disabilities. Therefore, as a result the significant growth of demand usage in TRS, as well as the new compensation rates, we adjust the annual carrier contribution factor for the July 2007 through June 2008 funding period from 0.0072 to 0.00819 in order to collect the additional monies needed over the remaining months of the fund year. The revised Fund size shall be \$636,736,491.75.

## III. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED that, pursuant to the authority contained in Section 225 of the Communications Act of 1934, as amended, 47 U.S.C. § 225, and Sections 0.141, 0.361 and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361 and 1.3, this Order IS hereby ADOPTED.

9. IT IS FURTHER ORDERED that the Interstate TRS Fund size for the July 2007 through June 2008 funding period will increase from \$553,378,363.18 to \$636,736,491.75 and that, as a result, the annual contribution factor shall be modified from 0.0072 to 0.00819.

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<sup>13</sup> 2007 NECA Filing at 11 & Exhibit 1. NECA states that it is unclear whether, in determining interconnected VoIP providers' contributions to the Fund, it should include only 4<sup>th</sup> Quarter VoIP revenues or annualized VoIP provider revenues. 2007 NECA Filing at 10. We adopt the contribution factor based on only 4<sup>th</sup> Quarter VoIP revenues pursuant to the directives in the *VoIP TRS Order*. See note 12, *supra*.

<sup>14</sup> See 47 C.F.R. § 64.604(c)(5)(iii)(B).

<sup>15</sup> 47 C.F.R. § 1.3.

<sup>16</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

<sup>17</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

<sup>18</sup> *Northeast Cellular*, 897 F.2d at 1166.

<sup>19</sup> See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Order, 19 FCC Rcd 2993 (Feb. 24, 2004) (similarly waiving, *sua sponte*, requirement that the carrier contribution factor be determined on an annual basis).

10. IT IS FURTHER ORDERED that this Order shall be effective upon release.

11. To request materials in accessible formats (such as Braille, large print, electronic files, or audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice) or (202) 418-0432 (TTY). This *Order* can also be downloaded in Word and Portable Document Formats (PDF) at <http://www.fcc.gov/cgb/dro/trs.html#orders>.

FEDERAL COMMUNICATIONS COMMISSION

Catherine W. Seidel, Chief  
Consumer & Governmental Affairs Bureau